MOTION FILED

JAN 14 1976

75-682

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. A–261

COLORADO CIVIL RIGHTS COMMISSION and
RAYMOND WENDELL HOLMES,

Petitioner

v.

COLORADO SPRINGS COACH CO., and
BYRON COWART,

Respondents

Motion for Leave to File Brief Amicus Curiae and Brief for the International Association of Official Human Rights Agencies as Amicus Curiae

MARGARET A. McKENNA
L. BRADLEY HITTLE
The International Association of
Official Human Rights Agencies
1625 K Street, N.W., 10th Floor
Washington, D.C. 20006

Of Counsel

EILEEN STEIN
The International Association of
Official Human Rights Agencies
1625 K Street, N.W., 10th Floor
Washington, D.C. 20006

January 12, 1976

INDEX

Page

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE..... i

Lower Court Opinions..... 1

Interest of the Amicus Curiae..... 2

Amicus Curiae Authority..... 2

Question Presented..... 3

Statutes Involved..... 3

Statement of the Case..... 3

Reasons for Granting a Writ of Certiorari..... 3

Argument..... 4

Conclusion..... 7

CITATIONS

Cases:

Alexander v. Gardner-Denver Corp., 415 U.S. 36 (1974) 5

INDEX continued

PAGE

STATUTES

Colorado Revised Statutes 1973, §8-73-108..... 5

Colorado Revised Statutes 1973, §8-74-109..... 4

Colorado Revised Statutes 1973, §8-74-106..... 5

Colorado Revised Statutes 1973, §24-34-305..... 4

Colorado Revised Statutes 1973, §24-34-307..... 4

Colorado Revised Statutes 1973, §24-34-308..... 4

Title VII of the Civil Rights Act of 1964, 42 USC §2000e (1970)... 5,6

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF FOR THE INTERNATIONAL ASSOCIATION OF OFFICIAL HUMAN RIGHTS AGENCIES AS AMICUS CURIAE

The International Association of Official Human Rights Agencies (IAOHRA) hereby respectfully moves for leave to file a brief amicus curiae in this case in support of petitioners, as provided in Rule 42 of the Rules of this Court. The consent of the attorneys for the petitioners has been obtained. The consent of the attorney for the respondents was requested, but was refused.

IAOHRA is an umbrella organization for 156 state and local civil rights agencies throughout the country, and 500 constituent state and local civil rights agencies. The Colorado Civil Rights Commission is affiliated with IAOHRA. The basic issue in this case is of interest to IAOHRA because it has a broad effect on all civil rights agencies which are charged by state statute or local ordinance with authority to hear and adjudicate charges of illegal employment discrimination. That issue is the extent to which a state court may apply the doctrine of res judicata to prevent civil rights agencies from hearing and adjudicating complaints for illegal employment discrimination. As a spokesperson for these agencies, IAOHRA desires the opportunity to present its views on this matter to the court.

Petitioners will emphasize the particular facts of their case. In the brief tendered with this motion, IAOHRA emphasizes some more general implications of this case and presents considerations that may place the issues here in a broader context. This, we believe, will aid the Court in perceiving the importance of this case for properly determining the role of state and local human rights agencies

throughout the country.

Respectfully submitted,

Eileen Stein
Counsel for the
International Association
of Official Human Rights
Agencies
1625 K Street, N.W.
Tenth Floor
Washington, D.C. 20006

by .....

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

A No. A-261

COLORADO CIVIL RIGHTS COMMISSION AND
RAYMOND WENDELL HOLMES, PETITIONERS

v.

COLORADO SPRINGS COACH CO., AND
BYRON COWART, RESPONDENTS

Amicus Curiae Brief in Support of
Petition for a Writ of Certiorari

AMICUS CURIAE BRIEF

LOWER COURT OPINION

The opinions of the Industrial Commission of Colorado, the Colorado Civil Rights Commission, and the District Court of the County of El Paso for the State of Colorado are unreported. The opinion of the Colorado Court of Appeals is

reported at ___ Colo. App. ___, 536 P.2d. 837, and is unofficially reported at 9 EPD Paragraph 10,004 (C.C.H. Publication "Employment Practices Decisions")

INTEREST OF THE AMICUS CURIAE

The interest of the International Association of Official Human Rights Agencies (IAOHRA) arises because it is an umbrella organization consisting of 156 member agencies throughout the country, all of whom are charged with the enforcement of a fair employment practices (FEP) law similar to that in Colorado. The issues raised in this case are not isolated to Colorado, but have implications for all state and local civil rights agenices.

Precedent established by the decision of the Colorado Court of Appeals could substantially reduce the jurisdiction of state and local civil rights agencies and reduce their ability to effectively eliminate illegal discrimination in employment.

Because IAOHRA is convinced of the importance of securing equal employment opportunities for all and because of the role of state and local civil rights agencies in settling equal opportunity controversies quickly and economically, the interest of amicus is that jurisdictional powers of these agencies not be improperly curtailed.

AMICUS CURIAE AUTHORITY

IAOHRA has obtained the consent of attorneys for the plaintiff to file a brief amicus curiae. The consent of attorneys for the defendant has been requested, but was refused. Amicus curiae authority is sought by a motion for leave to file amicus curiae which is attached with this brief.

QUESTION PRESENTED

Whether a state court can constitutionally bar a state civil rights commission authorized by statute to hear employment discrimination complaints from hearing such a complaint if it is brought by a person who has previously had a ruling upon an action brought before some other agency of the state in which the issue of discrimination arising from the same incident as the discrimination complained of before the civil rights commission was ruled upon.

STATUTES INVOLVED

The statutes primarily involved are the Colorado Antidiscrimination Act of 1957, C.R.S. 1973, 24-34-301 et. seq., the Colorado Employment Security Act, C.R.S. 1973, 8-70-101 et. seq., and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et. seq.

STATEMENT OF THE CASE

The statement set forth in Petitioner's Brief is adopted by Amicus and incorporated herein by reference.

REASONS FOR GRANTING A WRIT OF CERTIORARI

The "Reason for Granting the Writ" as recited in Petitioner's brief is adopted by Amicus and incorporated herein by reference.

In addition, Amicus urges this Court to grant a Writ of Certiorari for the following reasons:

This decision by the Colorado Court of Appeals will make relief from racial discrimination in employment slower and more difficult. It will diminish the authority and ability of state or local human rights agencies to settle complaints of employment discrimination, and will place a greater burden on already overloaded federal agencies and courts.

ARGUMENT

The decision of the Colorado Court of Appeals appears to deny jurisdiction to state civil rights agencies over employment discrimination complaints brought by persons who have previously had a hearing and final ruling by another administrative agency with narrower remedial powers and less comprehensive procedural requirements than the civil rights commission. The Colorado Civil Rights Commission is empowered to receive and investigate employment discrimination complaints, C.R.S. 1973, 24-34-305, to attempt to conciliate, and to hold hearings if conciliation fails. The complainant at these hearings is represented by a Commission attorney. Testimony is given under oath and transcribed, and the right of cross examination is preserved. C.R.S. 1973, 24-34-307. The Commission may issue an order requiring the respondent to cease and desist from discriminatory action and may order affirmative action including hiring, reinstatement or upgrading of employees, with or without backpay, as well as other relief. C.R.S. 1973, 24-34-307(12). Judicial review is available in the appropriate state district court. C.R.S. 1973, 24-34-308.

The procedural requirements of the Industrial Commission are less comprehensive. The Industrial Commission does not provide counsel for the claimant, and court review is in a summary manner in the court of appeals on an accelerated calendar. C.R.S. 1973, 8-74-109. Regulations for administrative

review of disputed claims are promulgated by the Industrial Commission and are not required to conform to common law or statutory rules of evidence and technical rules of procedure. C.R.S. 8-74-106 The primary question before the Industrial Commission is whether persons became unemployed "through no fault of their own". C.R.S. 1973, 8-73-108

If with these simplified procedures a decision rendered by a body such as the Colorado Industrial Commission has a res judicata effect upon a later hearing by the Colorado Civil Rights Commission on the issue of racial discrimination, it appears that decisions by other administrative agencies could also have that effect. The decision of the Colorado Court of Appeals provided no guidelines by which a person complaining of racial discrimination in the future may rationally determine whether due process and equal protection of law allows him to bring a claim before an administrative agency without risking the loss of his right to seek relief from racial discrimination through the state or local civil rights commission.

A consequence of this uncertainty is that plaintiffs will be encouraged to rely less on state and local civil rights agencies in employment discrimination disputes and will rely primarily on administrative and judicial remedies provided in Title VII of the Civil Rights Act of 1964, 42 USC § 2000e et. seq. Administrative action by the Equal Employment Opportunity Commission is not barred under Title VII because of state or local findings and orders, 42 USC §2000e 5(b). Nor is federal court action precluded because of an Equal Employment Opportunity Commission finding of no reasonable cause to believe that Title VII has been violated. 42 USC §2000e 5(f). Alexander v. Gardner-Denver, 415 U.S. 36,48 n.8 (1974).

Although Title VII requires that complaints filed with the Equal Employment Opportunity Commission be deferred for sixty days to state or local agencies if a state or local law exists which prohibits the unlawful practice alleged, 42 USC §2000e, the capacity of a state or local authority to actually order relief will influence both the seriousness with which a plaintiff is likely to pursue a claim at that level and the effectiveness of local or state processes.

In Colorado and elsewhere much of the work of the civil rights agency is to arrange conciliation without a hearing or court action. Parties are encouraged to reach a conciliation, in part, by the fact that the civil rights commission may hold a public hearing and issue an order if conciliation is unsuccessful. To the extent that state or local commissions are perceived by parties to a complaint to lack authority to issue orders, parties will not be motivated to negotiate seriously. The conciliation process will be compromised and the dispute will probably be pushed into the federal system.

When the real ability of state or local agencies to resolve employment discrimination cases is reduced in this manner, the sixty day deferral period required by Title VII will tend to operate as a procedural roadblock to final resolution rather than as a mechanism to assure an opportunity for quick and inexpensive local resolution of employment discrimination disputes. Since Congressional policy against racial discrimination is of highest priority this result ought to be avoided.

CONCLUSION

This Court should grant a writ of certiorari in this case so that it may clarify circumstances under which a state or local civil rights commission may grant relief to a complainant alleging racial discrimination in employment.

Respectfully submitted,

EILEEN STEIN
Counsel for the
International Association
of Official Human Rights
Agencies
1625 K Street, N.W.
Tenth Floor
Washington, D.C. 20006

January, 1976